

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF MASSACHUSETTS

3 No. 12-md-02409-WGY

4
5
6 In Re: NEXIUM (ESOMEPRAZOLE)
7 ANTITRUST LITIGATION

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11
12 For Jury Trial Before:
13 Judge William G. Young

14
15 United States District Court
16 District of Massachusetts (Boston)
17 One Courthouse Way
18 Boston, Massachusetts 02210
19 Monday, October 20, 2014

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23 United States District Court
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I N D E X

Jury Selection..... 4

E X H I B I T S

(None marked.)

1 P R O C E E D I N G S

2 (Begins, 9:00 a.m.)

3 THE COURT: Good morning. Let me explain how
4 we're going to proceed with the jury, because it's
5 slightly changed. Because there are so many parties,
6 when I came to get set with my explanation, we devised,
7 and you have all seen, a very simple one-page
8 questionnaire. If we're going to administer a
9 questionnaire to the jury, the procedure is going to be
10 different, and here's what it's going to be.

11 As we meet here the questionnaire is now being
12 administered to the jury, at least those jurors not
13 being sent to Judge Zobel who is impaneling a criminal
14 case. Once that questionnaire is filled out, copies
15 will be made and a copy -- now, if you want to give
16 Ms. Gaudet an e-mail list, she'll scan one and e-mail it
17 to you. But there'll be one hardcopy for the
18 plaintiffs, one hardcopy for the defendants, and a
19 hardcopy for me.

20 I am going to excuse everyone who uses or has
21 used, during the relevant period, Nexium, and everyone,
22 obviously, who owns stock in any of the entities
23 identified involved in the case. Other than that I will
24 use my discretion. And I will give you one half hour to
25 go over the questionnaires and at the end of that half

1 hour Ms. Gaudet will inform me as to which jurors you
2 jointly agree may be excused. I will excuse the jurors
3 you jointly agree may be excused. Then I'll come out on
4 the bench and tell you if I would excuse any other
5 jurors and hear you very briefly with respect to that.

6 Once we have a pool that survives that procedure,
7 we'll bring the pool into the courtroom. I will put
8 questions to that pool in this wise. I will take the
9 full pool, put the questions to them, ask them to raise
10 their hands. Various of you who have submitted proposed
11 questions, I'm not asking all those questions. To the
12 extent I don't ask it, your rights are saved.

13 Then one by one I will bring the jurors up to the
14 far side of the bench in the random order that they have
15 been randomized, ask them if they've responded
16 affirmatively to any of my questions, go over the
17 questionnaire with them, and make my determination
18 whether they are indifferent or ought be excused.

19 When I've made my determination I will either send
20 them into the jury box or excuse them. If you differ
21 with my determination, that's your chance to raise it
22 before the juror gets out of the courtroom. I will
23 consider it, make my determination, and we'll have an
24 adequate record.

25 Once I have 12 jurors, then you'll exercise your

1 challenges. We'll be all over at the sidebar and I will
2 give you -- each side has 6 challenges. I will excuse
3 those jurors. The plaintiff exercises first, then
4 defendant, the next round defendant first, then
5 plaintiff. Let's say 5 are excused. Then I will call
6 as many as I need to get 5 and we will continue that
7 procedure until the jury is selected. Then it will be
8 time for a recess. After that I will give my precharge
9 to the jury and the case will begin.

10 Now, I understand that there has been a partial
11 settlement and I'm grateful for that, but from the
12 Court's point of view it changes nothing. There are
13 still claims against Dr. Reddy's by plaintiffs, so we
14 will go forward on those claims. I will sort it out at
15 the appropriate time if I have to.

16 The only other thing --

17 MR. McDONALD: Your Honor?

18 THE COURT: Excuse me?

19 MR. McDONALD: Kevin McDonald for Dr. Reddy's.

20 THE COURT: Yes.

21 MR. McDONALD: We have settlements with all of the
22 plaintiffs in this trial for all of the claims.

23 THE COURT: I guess I'm more gratified than you
24 know to hear that. And no one challenges that? I hear
25 no challenge. You are all excused. You can -- we'll

1 deal with the -- with my duties with respect to a class
2 action settlement downstream, but for these purposes
3 you're excused, and I will alter the verdict slip
4 accordingly.

5 MR. McDONALD: Thank you, your Honor.

6 THE COURT: And I thank you very much. I think
7 that, on the part of all counsel, shows some very good
8 lawyering. Now -- yes?

9 MR. BUTSWINKAS: Judge, may I approach?

10 THE COURT: Approach?

11 MR. BUTSWINKAS: Yes.

12 THE COURT: Why is it necessary? The jury isn't
13 here.

14 MR. BUTSWINKAS: I have a question with respect to
15 the dismissal of the Section 2 claims that arises in the
16 context of this resolution. We were looking at the law
17 over the weekend and the law is unclear whether that
18 needs to also be dealt with under Rule 23. And we just
19 wanted to alert the Court that perhaps those claims may
20 need to be assessed under our rule as well to get
21 appropriate dismissal with prejudice under Rule 15.

22 THE COURT: Oh, they may downstream, and your
23 comment is very well taken, it's, just that we'll now
24 real-time, I've got jurors down there, and as a matter
25 of judicial administration the cleanest way to proceed

1 is to excuse them. What I said is not a dismissal, I'm
2 simply thanking them for their settlement, which I've
3 said I'm going to have to review. I will review it.
4 But you are excused now with my thanks.

5 MR. McDONALD: Thank you, your Honor.

6 THE COURT: All right. I have this mound of
7 further filings. There's only one thing that I can
8 address and I will address it, and then because I have
9 to change the verdict slip, I'm going to recess.

10 This business about what it is said, the Ranbaxy
11 CEO said. I expressed myself, just having glanced at
12 the motions in limine, and having said, "While I'm not
13 going through these newspaper reports," I expected the
14 plaintiffs would actually be able to prove that in some
15 more acceptable version. So then I get the next round
16 of briefing and I will tell you, based upon this, if
17 this is the best you can do, the defense's motion in
18 limine with respect to what Ranbaxy's CEO is said to
19 have said, that's allowed. That's out. We're trying
20 the case based upon the Federal Rules of Evidence and I
21 am going to follow them. I'm not making up rules. And
22 the fact that they've kept the document in their files
23 is not an adoptive admission, I'm not allowing it for
24 that reason, and I -- candidly I don't see how it's a
25 statement in furtherance of any conspiracy anyway,

1 though it's admissible if you could prove it up with
2 respect to Ranbaxy.

3 So let's be very clear. Their motion in limine,
4 the defense's motion in limine as to those Ranbaxy
5 statements is allowed. So no mention is to be made of
6 that in the opening. And it's allowed without prejudice
7 to your proposing a way to prove it downstream. But
8 we're not backing into it, because I don't think you're
9 close. And therefore any expert's opinion that's based,
10 in whole or in part, on that statement, I'm not
11 receiving that opinion. And it's got to be made clear
12 that the expert can render the opinion without, in any
13 reliance, on the basis of that statement by the Ranbaxy
14 CEO.

15 We'll stand in recess. We'll get you the answers
16 to the questionnaires. And a half an hour after that
17 we'll hope to commence. We'll recess.

18 (Recess 9:25 a.m.)

19 (Resumed, 11:05 a.m.)

20 THE COURT: Thank you very much, counsel. I have
21 been given the list of jointly-excused and I said I
22 would excuse all those jurors. While on my own motion,
23 looking at this, I would not have excused them all, I'm
24 sticking of course to what I have said to you. So all
25 those jurors are excused and we'll make a record of it.

1 There are two additional jurors that I was of the
2 mind to excuse and they are Juror Number 23 and Juror
3 Number 57, both have hardship grounds for excusal and I
4 have thought that those grounds were meritorious.

5 Is there any objection if I exclude Jurors 23 and
6 57? Yes?

7 MR. BUTSWINKAS: No objection, your Honor.

8 MR. HILLIARD: No objection, Judge.

9 THE COURT: Very well. And those jurors also are
10 excused. We're now ready. I'm going to recess. But
11 the Clerk will -- and the Jury Commissioner will bring
12 those jurors up to the courtroom.

13 So we're going to need all this space. Now, the
14 courtroom is a public courtroom, so I can't exclude you,
15 that would be unconstitutional, but I can deny you a
16 seat and I do so. So you people are all going to have
17 to crowd in the doorway and let those jurors in.

18 Yes, Mr. Sobol?

19 MR. SOBOL: Thank you, your Honor.

20 Although it wasn't marked on the sheets, I should
21 point out to the Court and to defense counsel that Juror
22 Number 19 appears to be an employee at Ahold, USA, which
23 is a holding company of one of the direct purchaser
24 class representatives.

25 THE COURT: That's just something you know?

1 MR. SOBOL: That's just something I know.

2 THE COURT: Then -- and I much appreciate that.
3 She's not excludable because she is an employee, but I
4 will inquire. We will recess.

5 (Recess, 11:10 a.m.)

6 (Jury venire present, 11:45 a.m.)

7 THE CLERK: MDL matter 12-02049, In re Nexium.

8 THE COURT: Well, good morning, again, ladies and
9 gentlemen. Now you're called into a particular
10 courtroom for service on a particular case and let me
11 take just a moment and explain to you exactly how we're
12 going to proceed.

13 What's going to happen now is that -- the next
14 thing that will happen is that the Clerk will ask you
15 all to stand up and put you on oath to answer the
16 questions that I put to you now honestly. And I know
17 you filled out a questionnaire already, but I have some
18 additional questions, not personal questions, but
19 questions designed to see whether it's appropriate that
20 you serve as a juror, in effect a judge of the facts, in
21 this specific case.

22 So as I ask the questions, if you think your
23 answer would be "yes," maybe it's "yes," perhaps it's
24 "yes," could be "yes," you're not sure but perhaps it's
25 "yes," please raise your hand. Ms. Gaudet, the clerks

1 and I, are watching. Then after I have asked the
2 questions, we will begin the interviews for service on
3 this particular jury one by one. And they won't take
4 long, we'll just have you come up to this side of the
5 bench and I will say, "Well, you answered "yes" or
6 there's something on the questionnaire I want to ask
7 about, the lawyers will be here with me, and we will
8 decide whether you are eligible to serve on this
9 particular jury.

10 Now, if you're excused, please don't think there's
11 anything the matter with you. There's nothing the
12 matter with you. It's just for one or another
13 appropriate legal reason, um, this is not the case for
14 you. And you're not going anywhere. We'll send you
15 back downstairs. We have other cases, as you know. We
16 have plenty.

17 So as we interview people, some people will be
18 tentatively chosen and we'll ask you to sit over there
19 in the jury box, and when we fill the jury box up, the
20 lawyers and I will confer and at that time some more
21 people may be excused and then from the ones that are
22 left we'll fill in those remaining seats as we pick the
23 jury.

24 Now if you are excused after a little talky-talk
25 over there with the lawyers, again I don't want you --

1 and I don't want any of the jurors remaining thinking,
2 well, those lawyers don't like him or they don't like
3 her, why not? That's not it. What that shows is just
4 how meticulously careful we are in picking the judges
5 for this case because that's what we're doing, we're
6 picking the judges for this important case.

7 So let's start by swearing the venire.

8 THE CLERK: Members of the potential jurors,
9 please stand, raise your right hand and repeat after me
10 saying your own name after the pronoun "I."

11 (Venire stands and oath is repeated.)

12 THE CLERK: I do solemnly swear to answer
13 truthfully questions put to me concerning my
14 qualifications to sit as a juror in this case.

15 You can be seated.

16 (Venire is seated.)

17 THE COURT: Let's start with me telling you just a
18 little bit about this case. None of the things I'm
19 going to tell you are disputed, but this gives you some
20 framework for the questions that I will now ask you.

21 This case that the Clerk made mention of is a
22 so-called civil case. That means it's a case among
23 private parties. It doesn't involve the government, it
24 involves private parties. And it's the type of case
25 that the lawyers and I call a "patent antitrust case."

1 Now, in this case the plaintiffs are members of
2 several classes. Well, what does that mean? It simply
3 means that certain representative parties have brought a
4 lawsuit on behalf of all the other people who are
5 similarly situated. And so the plaintiff
6 representatives, most of them -- I think all of them,
7 are listed on that questionnaire as various companies,
8 various insurance benefit plans, union benefit plans,
9 and the like. And the short of it is that these
10 plaintiffs have sued three pharmaceutical manufacturers
11 and what they say is that the antitrust laws were
12 violated and because of that violation the price of
13 Nexium -- that's why we asked, and if you took Nexium,
14 you shouldn't be here, at least in that period, and they
15 say the price of Nexium was too high, and they're suing
16 to get that overcharge, as it were, they're suing to get
17 that back.

18 Now, the pharmaceutical manufacturers, they deny
19 that, they say "That's not so, it's simply not so in any
20 respect," and that of course is what the trial is about.
21 Only jurors can decide that.

22 So the plaintiffs -- and I won't name all the
23 different entities, but the plaintiff classes are
24 wholesalers who bought Nexium from -- it's AstraZeneca,
25 Nexium is one of AstraZeneca's products. So who bought

1 Nexium from AstraZeneca, the retailers that sold Nexium
2 or provided it to fill the prescriptions for Nexium, and
3 the other entities like the union benefits plans and
4 indeed people who took Nexium who the plaintiffs argue
5 were overcharged.

6 So while I'm not going to introduce them all or
7 any of them, just so you can scope out the courtroom,
8 we'll have the plaintiff lawyers who are here in the
9 courtroom now, we'll have them all stand up.

10 (Lawyers stand up.)

11 THE COURT: So those are the tables. And there's
12 some in the back. We have a number of seats here.
13 Please be seated. So -- and they will come in and out
14 as the trial goes on. But that's how the courtroom is
15 laid out, the plaintiffs have those tables.

16 Now here's who they sue, they suit AstraZeneca.
17 Now, it's not disputed here that Nexium is a patented
18 product and the patents are held by AstraZeneca. So
19 AstraZeneca's one of the parties that sued and we'll
20 have all the AstraZeneca lawyers, wherever they are,
21 stand up.

22 (Lawyers stand up.)

23 THE COURT: Right, they've got this table here and
24 some of them are out there and they'll be others. Now,
25 that's AstraZeneca.

1 But the plaintiffs also sue Teva Pharmaceuticals.
2 Now, Teva is a pharmaceutical manufacturer and it has
3 various products, but as respects this case Teva is sued
4 here with respect to a potential generic version of
5 Nexium. All right? So we'll have the Teva lawyers
6 stand up here.

7 (Lawyers stand.)

8 THE COURT: There they are. Thank you.

9 Now, then there's another, the third
10 pharmaceutical manufacturer, and that's Ranbaxy. Now
11 Ranbaxy, like Teva, is -- it has pharmaceuticals that it
12 manufactures and sells, but for purposes of this suit
13 it's sued as a potential manufacturer of a generic
14 version of Nexium. And so Ranbaxy lawyers, wherever
15 they are, they'll stand up, and there's some of them.

16 (Lawyers stand.)

17 THE COURT: Thank you.

18 So those are the lawyers in the case and that's
19 what the case is about, generally. I'll be explaining
20 some more things to the jurors we pick.

21 But with all that in mind and your questionnaires
22 in mind, let me ask as my first question whether you're
23 -- each of you individually, whether any of the answers
24 on your questionnaire, as you've now reflected on it,
25 would any of you like to change any of your answers on

1 the questionnaire? If you would, please raise your
2 hand.

3 All right. Thank you.

4 Now, before we go any further I should read to you
5 the witnesses who are going to be called in this case
6 and, um, I'm going to ask you, do you know any of these
7 people? Are you related to any of these people or
8 acquainted with them so far as you know? And I'm going
9 to start with some people who are employed by
10 AstraZeneca.

11 Now, AstraZeneca, its headquarters, is in 1800
12 Concord Pike, excuse me, in Wilmington, Delaware. So
13 these are employees of AstraZeneca that we may hear from
14 as witnesses. And when I go beyond AstraZeneca, I'll
15 tell you.

16 Richard Barker. Terri Bowman. Matt Diggon.
17 Linda Palczuk. Jeffrey Pott. Gary Rowles. David Snow.

18 (Pause.)

19 THE COURT: Well, I may come back to AstraZeneca.
20 But that's it, for the moment, for AstraZeneca
21 employees.

22 Then we're going to hear from a gentleman by the
23 name of Timothy Hester. Mr. Hester is an attorney with
24 the law firm of Covington & Burling in Washington, D.C.

25 Now I'm going to employees of Ranbaxy. Ranbaxy's

1 headquarters are at 600 College Road, East in Princeton,
2 New Jersey. So these people are all employees of
3 Ranbaxy.

4 Ahmad Aboelez, and I'll spell it, A-B-O-E-L-E-Z.
5 J. Deshmukh. Oh, Mr. Deshmukh, excuse me, he may have
6 something to do with Ranbaxy, but he's actually a lawyer
7 with the law firm of Knobbe, Martens, Olson & Bear in
8 Washington. But here are Ranbaxy employees.

9 Venkatachalam Krishnan. P.P. Nath. Usha
10 Sankaran.

11 Now I'm done with Ranbaxy employees.

12 And here is Robert G. Sheperd, a lawyer with
13 Porzio, Bromberg & Newman in Princeton, New Jersey.
14 Joseph Todisco, an employee of Amneal Pharmaceuticals in
15 Bridgewater, New Jersey. Patricia Jaworski, an employee
16 of an outfit called Alvogen in Pine Brook, New Jersey.

17 Then here are some Teva employees. And Teva is
18 located at 1090 Horsham Road in North Wales,
19 Pennsylvania. Stacie Julie. Michael E. Patunas.

20 Then we may hear from some employees of a
21 pharmaceutical company that's not a party to the
22 lawsuit, but I should mention it, Dr. Reddy's
23 Laboratories. Andrew Miller. While Mr. Miller appears
24 to be a lawyer with a firm called Budd Larner of Short
25 Hills, New Jersey.

1 It looks like Dr. Reddy's Laboratories is located
2 at 200 Somerset Corporate Boulevard in Bridgewater, New
3 Jersey, and its employees are Lee Banks and Ajay Sing.

4 Then various people from various sources.
5 Lawrence F. Doud of Rochester Drug Co-Operative in
6 Rochester, New York. Lissette Priegues-Granado, who
7 works for the Fraternal Order of Police, Miami Lodge 20,
8 in Miami, Florida. Cheryl Blume, who works for PDG
9 Incorporated in Tampa, Florida. David Kessler, who
10 lives in San Francisco. Shannon McCool, who works for
11 the Fallon Group in Johnson City, Tennessee. Thomas
12 McGuire, who's with the Department of Health Care Policy
13 at the Harvard Medical School in Boston.

14 James Morrison, who lives in Columbia, Maryland.
15 Meredith Rosenthal, who works for GMA in Cambridge,
16 Massachusetts. Bruce Sunstein, an attorney with
17 Sunstein, Kann, Murphy & Timbers here in Boston. Steve
18 Rothwein, he works for AstraZeneca there in Wilmington,
19 Delaware. Lisa Jose Fales, an attorney with Venable in
20 Washington. James Galbraith, a lawyer with Kenyon &
21 Kenyon in New York. Jennifer King, who works for Teva
22 in North Wales, Pennsylvania.

23 Allan Pollack, who works for this firm Budd Larner
24 in Short Hills, New Jersey. Srini Rao, who works for
25 Dr. Reddy's Laboratories in Bridgewater, New Jersey.

1 Jose Alcaine, who works for Safeway in Pleasanton,
2 California. Robert Breetz who works for the Kroger
3 Company in Cincinnati, Ohio. Gregory Carlson, who works
4 for Giant Eagle, Incorporated in Pittsburgh. Gregory
5 Drew, who works for Value Drug in Altoona, Pennsylvania.
6 Margaret Glazier, who works for the Burlington Drug
7 Company in Milton, Vermont. Laura Schneider James, who
8 works for American Sales Company in Landover, Maryland.

9 Scott Johnson, who apparently is an attorney for
10 an outfit called Albertson's in Phoenix, Arizona. Chris
11 McHugh, who works for Walgreens located in Deerfield,
12 Illinois. Owen McMahon, who works for Rite Aid located
13 in Camp Hill, Pennsylvania. Leon Nevers, who works for
14 HEB Grocery Company in San Antonio, Texas.

15 Another Walgreen employee, Matthew Pike, from
16 Deerfield, Illinois. Ellen Pickering, who lives in
17 Gainsville, Florida. Edward Poon, who works for the New
18 York Hotel Trades Council and Hotel Association of New
19 York City Health Benefits. His business address is in
20 Long Island City, New York.

21 Ernie Richardsen, who works for Rite Aid in Camp
22 Hill, Pennsylvania. Jeffrey D. Romano, who works for
23 Meijer, Incorporated in Grand Rapids, Michigan. Daniel
24 Ryan, who works for The United Food and Commercial
25 Workers Unions and Employers Midwest Health Benefits

1 Fund in Park Ridge, Illinois. John Abramson, who lives
2 in Ipswich, Massachusetts. Kevin Burgess, who is
3 apparently at Texas A & M University, College Station,
4 Texas.

5 John Caldwell, who lives in Buckinghamshire in the
6 United Kingdom. Raymond Hartman works for Greylock
7 McKinnon Associates in Cambridge. Aaron Kesselheim who
8 works -- it says here the Division of
9 Pharmacoepidemiology and Pharmacoeconomics in Boston.
10 Keith Leffler lives in Seattle, Washington.

11 Jerold Meinwald is in the Department of Chemistry
12 and Chemical Biology at Cornell, Ithica, New York.
13 Bernhardt Trout is at MIT here in Cambridge. Shashank
14 Upadhye works for a law firm called Seyfarth Shaw in
15 Chicago.

16 Having read all that, I want to tell you, I'm not
17 at all clear all of these people are going to be called
18 as witnesses, and we've given you the schedule of this
19 trial and I want to assure you it's not going one day
20 longer than that schedule. In a case like this I can
21 set the schedule. I've talked it all through with the
22 lawyers. That's the schedule.

23 But my question is, do any of you know any of
24 those people, think you know, might be acquainted with
25 any of those people? Anyone?

1 (Silence.)

2 THE COURT: All right.

3 Now, here's the case, okay? It's a patent
4 antitrust case brought by these classes of individuals
5 and companies against AstraZeneca, Teva, and Ranbaxy.
6 Have you heard anything about this case, have you read,
7 seen, or heard anything at all about this case? That's
8 my first question. There's been a little bit in the
9 trade press, but nothing in the mainstream media, and I
10 want to ask you if any of you, from any source, have
11 heard anything at all about this case before coming in
12 here?

13 (Silence.)

14 THE COURT: Now, I know that earlier this morning
15 we passed out that questionnaire, but let me ask you
16 this. Has anyone said anything to you about this case,
17 this specific case, before coming up here now this
18 morning, other than my own staff giving you the
19 questionnaire? That would be more rare, but it happens,
20 and I need to ask.

21 Did anyone ask you anything?

22 (Silence.)

23 THE COURT: All right.

24 Do any of you stand to gain or lose anything
25 depending upon how this case comes out? And the

1 questionnaire, I tried to go over that. I mean
2 apparently you're not people who have yourselves taken
3 Nexium, but do you own stock in any of those? We asked
4 that question. But now I want to ask it in open court,
5 do you own stock or do you have some sort of
6 indebtedness where the outcome of this case could
7 directly affect an interest of yours? Anyone?

8 (Silence.)

9 THE COURT: Well, let me ask you this.

10 Are any of you sensible of any bias or prejudice
11 with respect to the case about to be tried? When I say
12 are you "sensible of it," I mean are you aware of
13 anything?

14 (Silence.)

15 THE COURT: Thank you.

16 Let me ask this, and my questions are getting more
17 broad.

18 Do any of you know -- yes, thank you. Thank you.
19 we'll make note of it.

20 Are any of you -- excuse me. Do any of you know
21 any reason why you do not stand indifferent in this
22 case? Now, what I mean by that is naturally we're
23 trying to seat a jury that's just as fair and impartial
24 as humanly we can do it. That's what these plaintiffs,
25 that's what each of these companies sued, that's their

1 constitutional right. So I'm trying to find out do you
2 have any feelings about this case, now that you've at
3 least been told a little bit about what it involves?

4 Do you have any feelings about these lawyers,
5 these types of lawyers? Do you have any feelings about
6 pharmaceutical companies and the -- (People stand.)

7 Thank you. Thank you. The prices charged by
8 pharmaceutical companies? (People stand.) Thank you.
9 Do you have any feelings about attorneys who represent
10 the pharmaceutical companies? (People stand.) All
11 right.

12 How about -- this is a class action, which is the
13 type of action, and the law provides for it, where the
14 claims of many aggregate people are folded into one
15 larger case, and then the rules provide for that, but
16 there's commentary that questions that and raises issues
17 of unfair prejudice or, um, people making money on these
18 claims. Do you have any feelings about class actions?

19 (Silence.)

20 THE COURT: Do you have any feelings about our
21 civil justice system that I ought know about going in?
22 Any feelings about our -- that's what this is, this is a
23 civil case between private parties.

24 (Silence.)

25 THE COURT: Feelings about lawyers in general and

1 how lawyers, um --

2 (Laughter.)

3 THE COURT: Well, I'll tell you, I always ask that
4 question.

5 (Laughter.)

6 THE COURT: But what I'm looking for is feelings
7 that I ought know about going in in this case. I mean
8 most cases are tried with the aid of lawyers. I'm a
9 lawyer. And you're welcome to -- so I'll ask. Any
10 feelings about judges who preside in our civil justice
11 system? Things I ought to know about going in?

12 (Silence.)

13 THE COURT: All right. The last question and
14 we'll get going, at least with the individual
15 questioning.

16 Now, I've asked my questions and you've had a
17 chance to reflect upon them, I've made mention of the
18 time the case is going to try and you can be sure it
19 will be tried within that time, maybe faster, but in
20 answer to any of the questions I've asked now, do you
21 think you're -- other than people who have already
22 raised their hands, do you think your answer would be
23 "yes" or could be "yes"?

24 (Silence.)

25 THE COURT: Very well. I find this panel

1 indifferent and we'll proceed.

2 (Pause.)

3 THE CLERK: Calling the jurors, please come
4 forward and line up right next to me.

5 (Jurors are lined up.)

6 THE COURT: Counsel you're not all going to be
7 able to come up here, but so the representatives of your
8 various clients, why don't you come up.

9 MR. BUTSWINKAS: Judge, where do you want us?

10 THE COURT: I want you somewhere where you can
11 hear and be heard and the juror can get here.

12 I forgot to bring your questionnaires out, and of
13 course the whole thing is about that.

14 (To audience.) So just to fill in the time, just
15 while we have you in order, um, we'll have you come up
16 here individually and I'll -- once I get the answers to
17 the questionnaires. So a little bit more about the
18 courtroom.

19 You see the lawyers get to sit on this side of the
20 bar. You hear about lawyers being members of the bar.
21 There actually is a bar.

22 (Hands to judge.)

23 THE COURT: Okay. There it is.

24 So they get to sit up here and we have the carpet
25 in deeper blue in honor of our attorneys.

1 Now I am ready.

2 And, Mr. Pires, if you would come up here.

3

4 AT THE SIDEBAR

5 THE COURT: And you're Susan Pires?

6 THE JUROR: Pires.

7 THE COURT: Pires. And, ma'am, I see you were a
8 tech at CVS, but some years ago.

9 THE JUROR: While I was in school.

10 THE COURT: Yeah. Does your former employment
11 with CVS -- yes, CVS is one of the plaintiffs because it
12 is a retailer of Nexium.

13 THE JUROR: Right.

14 THE COURT: Are you going to favor CVS or favor
15 the plaintiffs just because you worked at CVS?

16 THE JUROR: No, it was so long ago. It's history.

17 THE COURT: Well, maybe it's history, but on the
18 other hand, are you hostile to them or skeptical?

19 THE JUROR: No.

20 THE COURT: Do you truly think you could be fair
21 in this case, fair to all of the outfits suing and fair
22 to the companies that have been sued?

23 THE JUROR: Yes.

24 THE COURT: Did you answer "yes" then in any other
25 question I asked?

1 THE JUROR: Just that one.

2 THE COURT: Okay. Thank you.

3 And just so we can get to know you better, would
4 you tell us what you're doing now and if you're married
5 what your spouse does?

6 THE JUROR: I worked at customer service and sales
7 for a wire company that we sell metal internationally,
8 and I'm single.

9 THE COURT: Thank you. Would you take a seat in
10 the jury box that the people will direct you to.

11 (Juror leaves.)

12 THE COURT: All right. Emily Murphy.

13 Hi, Ms. Murphy.

14 THE JUROR: Hi.

15 THE COURT: Let's see here. You answered "no" to
16 the question -- did you answer "yes" to any of the
17 questions when I was asking the questions here in the
18 courtroom?

19 THE DEFENDANT: No.

20 THE COURT: Do you truly think you could be fair
21 in this case, fair to the various outfits and people?

22 THE JUROR: I could try, your Honor, but I have
23 really no idea what you're talking about.

24 THE COURT: And no one asks that you do. One of
25 the roles of the lawyers is to teach you, through

1 evidence, what the case is about. Part of the genius of
2 the jury system is that everyone gets a chance to sit.
3 Their job is to teach you. My job is to teach you the
4 law.

5 Now, if I fail, you can ask me questions, just
6 say, "I don't understand that," and I will stop and I
7 will explain it.

8 But as you know what you know, do you think you
9 could be fair in this case?

10 THE JUROR: Well, knowing that, yes.

11 THE COURT: Okay. Let me ask, just so we can get
12 to know you a little better, what do you do and if
13 you're married, what does you spouse do?

14 THE JUROR: I'm a hair dresser and I'm single.

15 THE COURT: Thank you. I'll ask you to take a
16 seat in the jury box.

17 (Juror leaves.)

18 THE COURT: Mr. Chan.

19 (Next juror.)

20 THE COURT: Now, you're Adam Chan?

21 THE JUROR: Yes.

22 THE COURT: You've answered "no" to the various
23 questions.

24 Did you answer "yes" to any of the questions I was
25 asking?

1 THE JUROR: No.

2 THE COURT: Do you truly think you could be fair
3 in this case, fair to each of the entities and people
4 suing, but equally fair to each of the pharmaceutical
5 companies that are being sued?

6 THE JUROR: Yes.

7 THE COURT: All right.

8 So we get to know you a little better, what do you
9 do and if you're married what does your spouse do?

10 THE JUROR: I work for State Street Corporation, a
11 mutual fund accountant. I'm not married.

12 THE COURT: Thank you. Would you take a seat in
13 the jury box.

14 (Juror leaves.)

15 THE COURT: And Ms. Given.

16 (Next juror.)

17 THE JUROR: Hi.

18 THE COURT: Hi. You're Annette Given?

19 THE JUROR: Yes, I am.

20 THE COURT: Now, you've got a trip on the 2nd to
21 the 5th?

22 THE JUROR: My 30th anniversary.

23 THE COURT: Yeah. Okay. Well, we plan to sit on
24 those days. So can that trip be moved? Is that your
25 actual anniversary?

1 THE JUROR: It's for my anniversary passed. It
2 was a gift from my husband for my birthday.

3 THE COURT: Fine. I think you should go on it.
4 You're excused. Go back downstairs.

5 THE JUROR: Okay. Thank you.

6 (Juror leaves.)

7 (Next juror.)

8 THE COURT: Mr. Banassou.

9 THE JUROR: Hello.

10 THE COURT: Now, you're Khalid Banassou and you've
11 answered "no" to the questionnaire questions.

12 Did you answer "yes" to any of the questions that
13 I put here in court?

14 THE JUROR: No.

15 THE COURT: Do you truly think you could be fair,
16 fair to each of the companies and the union plans and
17 individuals suing and equally fair to each of the
18 pharmaceuticals?

19 THE JUROR: The only question I have is, um, is
20 Teva -- what is the location of Teva, is it like an
21 American company?

22 THE COURT: Teva has its headquarters in the
23 United States.

24 THE JUROR: Is it an Israeli company?

25 THE COURT: Actually it may be. We'll tell you.

1 Yes, it is. It's an Israeli company.

2 THE JUROR: Well, I may not be partial to that
3 company.

4 THE COURT: I see. All right. You did just right
5 to ask and to tell us. You are excused from service on
6 this case.

7 (Juror leaves.)

8 (Next juror.)

9 THE COURT: Ms. Cariani. Karen Cariani.

10 THE JUROR: Yes.

11 THE COURT: All right.

12 You think this is going to cause you a hardship.
13 Tell me why.

14 THE JUROR: I work in public television. I have a
15 lot of projects going on and I have a staff of twelve.

16 THE COURT: I'm going to give you -- I try so hard
17 to accommodate, and if you looked at that schedule,
18 believe me I'll have you out of here every day at 1:00.
19 That's my way of dealing with it.

20 THE JUROR: Uh-huh.

21 THE COURT: I truly need people from all walks of
22 life. I think I would be proud to have you serve as a
23 juror, though I'm going to tell the jurors that they
24 can't say anything about the case. You've told me.

25 But with all respect, I think they can get along

1 without you.

2 THE JUROR: Uh-huh.

3 THE COURT: I understand your basis for saying you
4 don't know, in the answers to the other questions, but
5 so far as you do know now, the answer would be "yes"?

6 THE JUROR: Correct.

7 THE COURT: All right.

8 Did you answer "yes" then to any other questions I
9 asked you?

10 THE JUROR: Well, feelings about pharmaceuticals,
11 charging too much money.

12 THE COURT: Yes. All right.

13 Now, people are entitled to sit as jurors with a
14 variety of feelings. We may be talking about some sums
15 of money in this case, we may be talking about big sums
16 of money, but I will instruct as to what you should have
17 made of that information because as between the jurors,
18 the judges of the facts, and me, the judge of the law,
19 you have to take the law from me.

20 Now, do you think you could set aside any
21 instinctive feelings you have, follow my instructions as
22 to the law, to do a fair and just verdict?

23 THE JUROR: Yes.

24 THE COURT: All right. And I'm asking you, do you
25 really think you could be fair, fair to the companies,

1 to the individuals, the union plans, and be fair to the
2 three pharmaceutical companies that have been sued?

3 THE JUROR: Probably.

4 THE COURT: Well, do you think you can?

5 THE JUROR: Yes.

6 THE COURT: All right. Would you take your seat
7 in the jury box.

8 (Juror leaves.)

9 (Next juror.)

10 THE COURT: Mr. St. Amand.

11 Now, Mr. Amand, you answered "no" to the
12 questionnaire questions, but did you answer "yes" to any
13 of the questions I put here in court?

14 THE JUROR: No.

15 THE COURT: Do you truly think you can be fair,
16 fair to the people doing the suing, the companies, the
17 union plans, the retailers and wholesalers, and equally
18 fair to the pharmaceutical companies which are sued?

19 THE JUROR: Yeah.

20 THE COURT: You don't have any question about
21 that?

22 THE JUROR: No.

23 THE COURT: All right. So we can get to know you
24 better, what do you do and if you're married, what does
25 your spouse do?

1 THE JUROR: I'm divorced. I'm a custodian in the
2 Town of Acton.

3 THE COURT: Thank you. We'll ask you to take a
4 seat in the jury box.

5 (Juror leaves.)

6 (Next juror.)

7 THE COURT: Mr. Barrett.

8 THE JUROR: Good morning, Judge.

9 THE COURT: Good morning. You're Joseph P.
10 Barrett?

11 THE JUROR: Yes, sir.

12 THE COURT: You answered "no" to the questions
13 here. Did you answer "yes" to any of the questions that
14 I put here in court?

15 THE JUROR: No, I didn't.

16 THE COURT: Do you truly think you can be fair,
17 fair to the companies, the wholesalers, the retailers,
18 the union benefit plans, the people, and equally fair to
19 the pharmaceutical companies being sued?

20 THE DEFENDANT: Sure.

21 THE COURT: So we can get to know you better, tell
22 us what you do, if you're married, what your spouse
23 does?

24 THE JUROR: My wife is a school teacher. I have
25 three daughters, 24, 22, and 18. I just was laid off

1 from my job at JP Morgan Chase where I worked for three
2 years. Prior to that I spent 28 years as an agent with
3 the DEA, enough to appear before you several times.

4 THE COURT: And at JP Morgan, what did you do?

5 THE JUROR: I was an investigator, fraud, a fraud
6 investigator in security.

7 THE COURT: Thank you. We'll ask you to take a
8 seat in the jury. And I thank you.

9 (Juror leaves.)

10 (Next juror.)

11 THE COURT: Mr. Hannigan. William P. Hannigan?

12 THE JUROR: Yes.

13 THE COURT: And, Mr. Hannigan, you answered "no"
14 to these questions on the questionnaire. Did you answer
15 "yes" to any of the questions that I brought up in
16 court?

17 THE JUROR: No.

18 THE COURT: Do you truly think you can be fair,
19 fair to the wholesalers, the retailers, and insurance
20 benefit plans, and the people suing, and also to the
21 three pharmaceutical companies that are being sued?

22 THE JUROR: Yes.

23 THE COURT: So we can get to know you better,
24 would you tell us what you do and if you're married what
25 your spouse does.

1 THE JUROR: I am an IT consultant. I'm a single
2 provider. I do IT services for my clients, basically
3 I'm their IT department. So they call me when the
4 service is down, that kind of thing. And I'm married.
5 No children.

6 THE COURT: And your wife is at home?

7 THE JUROR: She works, she's a manager at Boston
8 Senior Home Care.

9 THE COURT: Thank you. We'll ask you to take a
10 seat in the jury box.

11 (Juror leaves.)

12 (Next juror.)

13 THE COURT: And Mr. Chiet.

14 THE JUROR: Yes.

15 THE COURT: You're Adam Chiet?

16 THE JUROR: Yes.

17 THE COURT: Excuse me. Mr. Chiet.

18 THE JUROR: Yes.

19 THE COURT: You answered "no" to these questions,
20 but did you answer "yes" to any of the questions here in
21 open court?

22 THE JUROR: I didn't.

23 THE COURT: Do you truly think you can be fair,
24 fair to both the wholesalers and benefit plans, the
25 people suing, and fair to each of the pharmaceutical

1 companies being sued?

2 THE JUROR: I do.

3 THE COURT: Could you tell us, so we can get to
4 know you a little better, what you do and if you're
5 married what your wife does.

6 THE JUROR: I'm single, I'm a graphic designer,
7 and an image specialist for a large pet supply company.

8 THE COURT: What's an image specialist?

9 THE JUROR: Um, using Photoshop, adjusting
10 photographs and images.

11 THE COURT: So you have the images and you get
12 them in?

13 THE JUROR: Correct.

14 THE COURT: Thank you. We'll ask you to take a
15 seat in the jury box.

16 (Juror leaves.)

17 (Next juror.)

18 THE COURT: Ms. Beaulieu.

19 Good morning. You're Cynthia Beaulieu?

20 THE JUROR: Yes.

21 THE COURT: And you answered "no" to these
22 questions. Did you answer "yes" to any of the questions
23 that I asked you here in court?

24 THE JUROR: No.

25 THE COURT: Do you truly think you can be fair,

1 fair to those wholesalers and retailers and union
2 benefit plans that are suing, but equally fair to the
3 pharmaceutical companies that are being sued?

4 THE JUROR: Yes.

5 THE COURT: So we can get to know you a little
6 better, can you tell us what you do and if you're
7 married, what your husband does?

8 THE JUROR: I work for the Town of Dracut in the
9 school cafeteria. I'm married with two kids.

10 THE COURT: And your husband, what does he do?

11 THE JUROR: He works for Cabot, he is a -- they
12 make ink cartridges.

13 THE COURT: And what does he do there? He works
14 on the production line?

15 THE JUROR: Yes, he's a machinist. I was trying
16 to think of it.

17 THE COURT: Okay. Thank you. We'll ask you to
18 take a seat in the jury box.

19 (Juror leaves.)

20 (Next juror.)

21 THE COURT: Mr. Bouchard.

22 And you're Robert Bouchard?

23 THE JUROR: Correct.

24 THE COURT: And you answered "no" to these
25 questions. Did you answer "yes" to any of the questions

1 I put in court?

2 THE JUROR: Yes, I did.

3 THE COURT: And what question is that?

4 THE JUROR: The one about the price of medication.
5 I think they are grossly overpriced. They're grossly
6 overpaid.

7 THE COURT: Uh-huh.

8 Now, in this case we're going to hear about money,
9 we're going to hear about the charges for different
10 things, and we may hear about big money.

11 As between the jury and the judge, the jury has
12 the last word on the facts, what the jury believes, but
13 you have to take the law from me. So as to some things
14 of value, I will tell you what you can make of it and
15 other things don't count, and I will say that.

16 Do you think you can follow my instructions or are
17 you going in thinking the pharmaceutical companies are
18 really gouging the public?

19 THE JUROR: I do believe they are gouging the
20 public.

21 THE COURT: Fine. That's why I'm asking. You're
22 excused from service on this case. We'll find you a
23 different case. And thank you very much.

24 THE JUROR: Thank you.

25 (Juror leaves.)

1 (Next juror.)

2 THE COURT: Ms. Pacifico.

3 THE JUROR: Yes.

4 THE COURT: You're Cara Pacifico?

5 THE JUROR: Yes.

6 THE COURT: And I see here you have an aunt
7 formerly employed by CVS, but you've never been employed
8 by CVS?

9 THE JUROR: No.

10 THE COURT: Your ant's employment, does that lead
11 you to favor CVS in this case?

12 THE JUROR: No.

13 THE COURT: Does it make you hostile or skeptical
14 of CVS?

15 THE JUROR: I don't think so, no.

16 THE COURT: Well, let me ask you this. In this
17 case do you truly think you can be fair, fair to the
18 wholesalers or retailers like CVS, the union benefit
19 plans, the people suing, but equally fair to the three
20 pharmaceutical companies sued, do you think you can be
21 fair?

22 THE JUROR: Yes.

23 THE COURT: Did you answer "yes" to any of the
24 questions that I put here in open court?

25 THE JUROR: No.

1 THE COURT: So we get to know you a little better,
2 could you tell us what you do and if you're married what
3 your spouse does.

4 THE JUROR: I'm not married. I may present a
5 hardship, I'm actually leaving my job on November 1st
6 and I'm supposed to train my successor, but I would
7 rather not. But other than that I'm a freelance theatre
8 technician.

9 THE COURT: What's that?

10 THE JUROR: I do lighting and costumes for
11 theatrical events whether those be corporate events or
12 theatrical events for the American Repertory Theatre.

13 THE COURT: Thank you. We'll ask you to take a
14 seat in the box.

15 (Juror leaves.)

16 (Next juror.)

17 THE COURT: Mr. Shih. I'm sorry, Ms. Shih.

18 THE JUROR: Yes.

19 THE COURT: Forgive me, ma'am. You're Juliann
20 Shih?

21 THE JUROR: Yes.

22 THE COURT: And you've answered "no" to these
23 questions. Did you answer "yes" to any of the questions
24 I've put here in open court?

25 THE JUROR: I did.

1 THE COURT: And which ones?

2 THE JUROR: So the one where I might have feelings
3 about --

4 THE COURT: What feelings should I know about?

5 THE JUROR: About pharmaceutical companies. I'm
6 actually partially funded by a pharmaceutical company,
7 Breyer, um, and while that's not my -- you know, my
8 actual job description, um --

9 THE COURT: What do you do, so we get to know you?

10 THE JUROR: I'm a conservational biologist in
11 academia, but part of my funding comes from Breyer, so
12 that's --

13 THE COURT: All right. You did just right to tell
14 us that.

15 Now, in this case does that present any difficulty
16 to you in being a judge in this case, are you favorably
17 disposed to pharmaceutical companies because of course
18 they, and maybe the ones involved in this case, they do
19 support your search of all different --

20 THE JUROR: Perhaps.

21 THE COURT: You think you may be?

22 THE JUROR: Perhaps.

23 THE COURT: All right. You did just right to tell
24 us. You're excused in this case. We'll find another
25 case for you. Go back downstairs. Thank you very much.

1 (Juror leaves.)

2 (Next juror.)

3 THE COURT: And Mr. Sampson?

4 THE JUROR: Hello.

5 THE COURT: Hi. You're Richard Sampson?

6 THE JUROR: Yes.

7 THE COURT: Well, let's go right to the issue
8 here. You've got the schedule. I need to start right
9 smack at 9:00 and I will get you out of here every day
10 at 1:00, except when the jury is deliberating.

11 Can you tell me what the job problem is?

12 THE JUROR: I work second shift and my wife works
13 first shift, so it's hard for me to cover my -- I have
14 an 18-month old son. So that's kind of hard for me.

15 THE COURT: You did right to tell us. You're
16 excused from service on this case. We'll find something
17 else for you. Thank you very much.

18 (Juror leaves.)

19 (Next juror.)

20 THE COURT: Ms. Henderson.

21 THE JUROR: Hi there.

22 THE COURT: Hi. You've answered "no" to these
23 questions. Did you answer "yes" to -- first of all,
24 you're Paula Henderson and you've answered "no" to these
25 questions. Did you answer "yes" to any of the questions

1 that I put here in open court?

2 THE JUROR: No.

3 THE COURT: Do you truly think you can be fair,
4 fair to both sides, the retailers, the union plans, the
5 people suing, and equally fair to the three
6 pharmaceutical companies that are being sued?

7 THE JUROR: Yes.

8 THE COURT: So we can get to know you a little
9 better, could you tell us what you do and if you're
10 married what your spouse does?

11 THE JUROR: I work for Stop & Shop headquarters.
12 I put the flier together. And I work part time at
13 Kohls, on holidays.

14 THE COURT: In retail?

15 THE JUROR: Yes.

16 THE COURT: And your husband?

17 THE JUROR: No, I'm not married. I'm a
18 grandmother of two.

19 MR. SOBOL: Your Honor, if I may?

20 THE COURT: You may ask me.

21 MR. SOBOL: I am doing that exactly, your Honor.
22 Stop & Shop is a subsidiary of one of the
23 plaintiffs.

24 THE COURT: Oh, that's fair. And what's the name
25 of it?

1 MR. SOBOL: Ahold.

2 THE JUROR: Oh, I didn't Ahold on there.

3 THE COURT: No, that's not your fault. That's why
4 he jumped up.

5 THE JUROR: Okay.

6 THE COURT: So it's the holding company. I
7 follow. And forgive me, Mr. Sobol.

8 So Ahold owned Stop & Shop and you work for Stop &
9 Shop and Stop & Shop, therefore Ahold, are plaintiffs
10 here.

11 THE JUROR: Okay.

12 THE COURT: Now, the fact you work for them
13 doesn't prevent you from being a juror, but I need to
14 ask you, are you going to favor Stop & Shop in this
15 case?

16 THE JUROR: No, I'll be fair.

17 THE COURT: You're not going to be skeptical or
18 even hostile to them just because you worked for them?

19 THE JUROR: Oh, no.

20 THE COURT: All right. We'll ask you to take a
21 seat in the jury box at this point.

22 (Juror leaves.)

23 THE COURT: And thank you, Mr. Sobol, you flagged
24 it and I skipped it.

25 (Next juror.)

1 THE COURT: Mr. Kreisel.

2 You're Anthony Kreisel?

3 THE JUROR: Yes.

4 THE COURT: And you've answered "no" to these
5 questions. Did you answer "yes" to any of the questions
6 I put in open court?

7 THE JUROR: I did.

8 THE COURT: Which one or ones?

9 THE JUROR: Well, you said bias.

10 THE COURT: Yes, I want to hear it.

11 THE JUROR: Okay. I could possibly have a bias.
12 I was an investment professional for over 40 years, but
13 it was as a security analyst and a fund manager and I
14 followed the industry. I have more than a layman's
15 working knowledge of the operational and financial
16 aspects in this industry. So, you know, I don't really
17 recall the question, but I certainly --

18 THE COURT: Well, you're doing just right to tell
19 us.

20 I guess the concern from my point of view is this.
21 That doesn't prevent you from serving as a juror. I'm
22 the one who is charged with -- well, the jury decides
23 the facts, the judge teaches and explains the law.

24 Now, I will do the best I can to do that. I feel
25 I am able to do that. You may, as someone who practiced

1 in analyzing stocks and why people -- one of the things
2 we're going to get into is the settlement of cases and
3 why people settle and what value changes hands when
4 cases are settled, and those are things that you may
5 have looked at in figuring out the effect on market
6 prices.

7 THE JUROR: Um-huh.

8 THE COURT: You still may sit as a juror and you
9 may use any information that you know of, but my
10 question is going to follow that my instructions as to
11 the law -- or do you think you're going to have some
12 problem with that?

13 THE JUROR: Um, no, I think I'm morally and
14 ethically --

15 THE COURT: You're right.

16 THE JUROR: Yes.

17 THE COURT: For instance, I'm getting ahead of
18 myself. But in this case, the plaintiffs' case goes
19 nowhere unless there's a large and unjustified payment
20 in the settlement of a patent case going from
21 AstraZeneca to Teva and then there's other things. But
22 that's the first thing.

23 Now, we don't just use those words and say to the
24 twelve jurors, "Well, go out there and figure out
25 whether you think it was large and unjustified," instead

1 I will explain things that the courts have said about
2 what constitutes a "large" or what constitutes
3 "unjustified," and those things courts have said.

4 Can you follow my explanation?

5 THE JUROR: Yes.

6 THE COURT: Oh, I don't mean understand it, but
7 once you understand it, can you apply it?

8 THE JUROR: Yes, it certainly seems so.

9 THE COURT: Fine.

10 Well, we are getting to know you, why don't you
11 tell us what you do and if you're married what does your
12 spouse do?

13 THE JUROR: Okay, I'm married. I'm a clinical
14 psychologist. I was an analyst for 20 years in
15 different firms in Boston. I'm a CFA. I managed the
16 Putnam Growth and Income Fund for many years, so I've
17 invested in pharmaceutical stocks. Since retiring I was
18 chair of the investment committee and on the Board of
19 Trustees of my alma mater, but I still sit on the
20 advisory board for a management firm.

21 THE COURT: Do you mind telling us what your alma
22 mater is?

23 THE JUROR: Franklin Marshall College.

24 THE COURT: Right. To sum up, do you think --
25 having said you can follow my instructions, do you

1 really think you can be fair in this case, fair to the
2 various entities who say they paid more, but equally
3 fair to the pharmaceutical companies?

4 THE JUROR: I can't answer "yes" or "no." I'm not
5 sure.

6 THE COURT: Well, you're answering.

7 THE JUROR: Because I --

8 THE COURT: No. No.

9 THE JUROR: I don't how to say it.

10 THE COURT: You're saying it just right. There's
11 no right way to say it. I think the better part of
12 valor is to excuse you, though I'd love to keep you. So
13 we'll excuse you from service on this case. And I thank
14 you for your participation in the process. Thank you,
15 sir.

16 (Juror leaves.)

17 (New juror.)

18 THE COURT: Mr. Shannon. And you're William
19 Shannon?

20 THE JUROR: Yes.

21 THE COURT: And you've answered "no" to these
22 questions. Did you answer "yes" to any of the questions
23 I put here in open court?

24 THE JUROR: No.

25 THE COURT: Do you truly think you can be fair,

1 fair to the various entities suing, wholesalers,
2 retailers, union benefit plans, individuals, but fair
3 equally to the three pharmaceutical companies, do you
4 think you can be fair?

5 THE JUROR: Yes.

6 THE COURT: So we can get to know you a little
7 better, can you tell us what you do and if you're
8 married what your spouse does?

9 THE JUROR: Sure. I'm married with two young
10 children, my wife is currently staying home, and I work
11 as a real estate agent, and I'm a real estate investor.

12 THE COURT: Thank you. We'll ask you to take a
13 seat in the jury box.

14 (Juror leaves.)

15 THE COURT: All right, that's 12. Let me get my
16 notebook and we'll do the challenges.

17 (Pause.)

18 THE COURT: Who speaks for the plaintiff?

19 MR. HILLIARD: Rob Hilliard, Judge, for the
20 plaintiffs.

21 THE COURT: All right. I'll hear you.

22 MR. HILLIARD: Number 3.

23 THE COURT: Number 3. And that's it? You're
24 otherwise content?

25 MR. SOBOL: Nope.

1 MR. HILLIARD: We don't do one at a time?

2 THE COURT: No, you do all of yours and they do
3 all of theirs.

4 MR. HILLIARD: Oh, I apologize, Judge. Then
5 Number 24.

6 MR. SOBOL: Seat 12, your Honor.

7 THE COURT: Thank you. Excused.

8 Otherwise content?

9 MR. HILLIARD: Otherwise content.

10 THE COURT: Thank you.

11 The defense?

12 (Pause.)

13 THE COURT: Counsel?

14 MR. BUTSWINKAS: 1.

15 THE COURT: You want Juror in Seat 1. She's
16 excused.

17 You're going by seat number, correct?

18 MR. BUTSWINKAS: No, we're going by juror number.

19 THE COURT: Just so we're clear, so Number 1 is
20 the juror in Seat 1, she's excused. Go ahead.

21 MR. BUTSWINKAS: 6.

22 THE COURT: Juror 6 is in what seat?

23 MR. VAN WART: In Seat 4.

24 THE COURT: Fine. She's excused.

25 MR. BUTSWINKAS: Then 9.

1 THE COURT: 9 is in what seat?

2 MR. VAN WART: Should be Seat 7.

3 THE COURT: And the seat in the front row, first
4 seat to the right, you want him off?

5 MR. BUTSWINKAS: Yes.

6 THE COURT: Very well. Those three jurors are
7 excused. There are no back strikes. We'll refill the
8 box.

9 (Pause.)

10 THE COURT: Oh, what number?

11 MR. SOBOL: What's the last one?

12 THE COURT: Number 9 in Seat 7.

13

14 (In open court.)

15 THE CLERK: Juror 1, Susan Pires. Juror 3, Adam
16 Chan. Juror Number 6, Karen Cariani. Juror 9, William
17 Hannigan. Juror Number 24, William Shannon.

18 (People leave box.)

19 THE COURT: Wait a minute. Wait a minute.

20 (Pause.)

21 THE COURT: You want to excuse -- all right, they
22 may be excused.

23

24 AT THE SIDEBAR

25 THE COURT: Who else?

1 MR. BALDRIDGE: Juror 11.

2 THE COURT: In what seat? Cynthia Beaulieu?

3 MR. VAN WART: Yeah, it's the woman in the purple,
4 second one in, next to the man.

5 THE COURT: Well, I'm pointing out the lady next
6 to the man, is that right?

7 MR. VAN WART: To the left.

8 THE COURT: Please don't point.

9

10 (In open court.)

11 THE COURT: Ms. Beaulieu is excused. She's
12 excused.

13 THE CLERK: Juror 11, Cynthia Beaulieu, is
14 excused.

15 (Juror leaves.)

16

17 AT THE SIDEBAR

18 THE COURT: Mr. Stupakevich.

19 THE JUROR: Stupakevich.

20 THE COURT: Yes. Forgive me, Mr. Stupakevich.
21 You're Jason Stupakevich and I'm very sensitive to how
22 you answered the first question, but I want to ask you
23 about that. Tell us about that. What's the problem?

24 THE JUROR: I work for a small business on Cape
25 Cod and my boss just recently became a sole proprietor

1 and he relies on me a great deal. I'm the product
2 manager. I work with two printing presses. We screen
3 print and with the busy season of the holidays coming up
4 and everything, I'm going to be very busy around the
5 shop. And I just think that with the length of the
6 trial, me not being around the shop and available for
7 the business, the company will probably suffer.

8 THE COURT: I'm going to accept that and I'm going
9 to excuse you from serving on this trial. We'll give
10 you your card and you can go back downstairs.

11 THE JUROR: Thank you.

12 (Juror leaves.)

13 (Next juror.)

14 THE COURT: Now, Ms. Ambrose, PG Ambrose. You're
15 Phyllis Gail Ambrose?

16 THE JUROR: Yes.

17 THE COURT: You were once employed by Giant Eagle
18 and you earlier have owned stock in AstraZeneca, but you
19 don't now?

20 THE JUROR: That's correct.

21 THE COURT: But let me ask about both of those
22 associations.

23 Giant Eagle is one of the outfits that's suing,
24 AstraZeneca is one of the pharmaceutical companies being
25 sued. Obviously since you don't have stock it's not --

1 stockholders can't sit just like I can't be the judge if
2 I own stock in any of these outfits. But your
3 association with AstraZeneca, will you favor them
4 because you once owned their stock?

5 THE JUROR: I can't imagine so, no.

6 THE COURT: Are you skeptical or hostile to them
7 just because you owned their stock?

8 THE JUROR: Oh, I don't think so. I'm not a
9 hostile person.

10 (Laughter.)

11 THE COURT: But the same for Giant Eagle, that was
12 years ago?

13 THE JUROR: It indeed was.

14 THE COURT: A few years ago. Excuse me.

15 Are you going to favor them because they gave you
16 this college-time job?

17 THE JUROR: I don't believe so.

18 THE COURT: Are you hostile or skeptical of them
19 because of whatever happened while you worked there?

20 THE JUROR: No.

21 THE COURT: Do you truly think you can be fair,
22 fair to all the wholesalers, retailers, like Giant
23 Eagle, the union benefit plans, the individuals, but
24 equally fair to the three pharmaceutical companies that
25 have been sued?

1 THE JUROR: I think so.

2 THE COURT: Did you answer "yes" to any of the
3 questions I put here in open court?

4 THE JUROR: Um, no, I didn't.

5 THE COURT: But you're thinking about it?

6 THE JUROR: I think you asked some people about
7 the pharmaceutical companies. I don't have a hostility,
8 as you put it, towards them, but I suspect they'll make
9 a healthy profit. Which is the American way. That's
10 fine. But no other answers.

11 THE COURT: Well, that's really what I'm probing
12 and you have every right to your views.

13 Now, we're going to learn in this case about
14 things like that. As between the jury, who is the final
15 word on the facts, and the judge, you have to take the
16 law the way that I explain it to you, and I may, in an
17 explanation, say "Well, you can consider this, but you
18 can't consider that."

19 Do you think you can follow my instructions as to
20 the law?

21 THE JUROR: Yes.

22 THE COURT: Now, so we get to know you a little
23 better, would you tell us what you do and if you're
24 married what your spouse does?

25 THE JUROR: I'm currently in transition. I'm

1 looking for a job. I have just kind of -- I've taken
2 time off caring for my mother who passed way. So that's
3 what I'm doing. Forgive me.

4 (Crying.)

5 THE COURT: Please, I surely understand. When
6 last you worked, ma'am, and take a moment, but when last
7 you worked, what did you do?

8 THE JUROR: I worked in --

9 THE COURT: It's quite all right.

10 THE JUROR: In high tech, um, in marketing and
11 business development in telecommunications companies.

12 THE COURT: And you're not married?

13 THE JUROR: No, I am not.

14 THE COURT: We'll I'll ask you to take a seat on
15 the jury.

16 (Juror leaves.)

17 (Next juror.)

18 THE COURT: Mr. Appleton. Ms. Appleton. Excuse
19 me. Forgive me, Ms. Appleton.

20 THE JUROR: It's okay.

21 THE COURT: You're Avery Appleton?

22 THE JUROR: Yes.

23 THE COURT: And we'll jump right to the first
24 question.

25 THE JUROR: My husband and I own a couple of

1 restaurants in Cambridge. We very much mom and pop the
2 whole thing. And, um, the one person who is generally
3 pretty responsible, his father just passed away and he's
4 gone for about a week and a half. I don't know if that
5 --

6 THE COURT: Well, you did just right to tell us
7 and I need to take it into account. Here's how I tried
8 to take it into account.

9 That schedule that we put on the questionnaire,
10 that's absolutely firm, we're going to have you out of
11 here every day at 1:00. I mean I need you at 9:00 every
12 day, but at 1:00, we're done. We're not sitting every
13 day. I so much need people from different walks of
14 life. So my inclination is to ask you to stay because I
15 -- it sounds to me like you can work it out and it will
16 get better after this immediate week and a half.

17 Am I missing something?

18 THE JUROR: Well, we're open for lunch every day
19 and I'm generally the lunch person and I can't ask him
20 to open and close every day.

21 THE COURT: All right. Well, maybe you can work
22 it out with someone else, at least for the time you
23 would be sitting here.

24 THE JUROR: It would be very difficult. I'm not
25 sure how that would happen.

1 THE COURT: All right. I'm going to excuse you
2 from service on this case.

3 THE JUROR: Thank you, your Honor. I appreciate
4 it.

5 THE COURT: And go back downstairs.

6 (Juror leaves.)

7 (Next juror.)

8 THE COURT: Mr. Wolters.

9 You're William Wolters?

10 THE JUROR: Yes, I am.

11 THE COURT: We have part of your address. What
12 town do you live in?

13 THE JUROR: Holiston.

14 THE COURT: In Holiston. Now, you answered "no"
15 to these questions. Did you answer "yes" to any of the
16 questions I put in open court?

17 THE JUROR: No, I did not answer your question
18 because, um, actually I have a -- because of my
19 background, I have somewhat of a bias against a certain
20 group in here.

21 THE COURT: And what is your background and what
22 is your bias?

23 THE JUROR: My background is I've been in the
24 insurance business for some 30-odd years, I just
25 retired, and I've been General Counsel, in-house

1 counsel, and in the last 20 years I've been working on
2 big projects for the company I work for.

3 THE COURT: So what's the bias?

4 THE JUROR: The bias is I don't like the
5 plaintiffs doing the --

6 THE COURT: The class actions?

7 THE JUROR: The class actions, yes.

8 THE COURT: All right.

9 THE JUROR: And the reason for it is because I
10 find, as a general rule, that the people that they're
11 supposed to be protecting get very little and the
12 attorneys get a lot more. So that's been my bias.

13 THE COURT: And you've done just right to tell us.

14 Now, let me say something to you very direct.
15 It's going to be up to the jury here whether the
16 plaintiffs get anything at all. If it were to play out
17 that the plaintiffs got something, you have my word that
18 it is the people who were injured who are going to get
19 recovery far far more than any one of the lawyers.

20 THE JUROR: With all due respect, I don't --

21 THE COURT: You don't believe that?

22 THE JUROR: No, I don't. I'm a lawyer too, but,
23 you know, I understand the business, and I wanted you to
24 be aware of that.

25 THE COURT: All right. You've done just right.

1 I'm going to excuse you from service on this case. I
2 commend to you a decision I wrote called In Re Relafen.
3 But you're excused and I thank you.

4 (Laughter.)

5 (Juror leaves.)

6 (Next juror.)

7 THE COURT: Ms. Sahoo.

8 THE JUROR: Yes.

9 THE COURT: And you're Suchismita Sahoo?

10 THE JUROR: Yes.

11 THE COURT: And you've answered "no" to these
12 questions. Did you answer "yes" to any question that I
13 put in open court?

14 THE JUROR: Um, nope.

15 THE COURT: Do you truly think you can be fair,
16 fair to the wholesalers and retailers and union benefit
17 plans and the individuals suing, but equally fair to the
18 three pharmaceutical companies that are being sued?

19 THE JUROR: I think so.

20 THE COURT: All right. So we get to know you a
21 little better, would you tell us what you do and if
22 you're married what your spouse does.

23 THE JUROR: I'm an electrical engineer and I work
24 in a health care company called Aetna Care. My husband
25 is also a database engineer and he works with Oracle

1 Corp.

2 THE COURT: He works with?

3 THE JUROR: Oracle Corporation.

4 THE COURT: With Oracle.

5 What kind of an engineer are you? I didn't catch
6 that.

7 THE JUROR: I'm Quality Assurance.

8 THE COURT: Oh, Q-A. Forgive me. Thank you.
9 We'll ask you to take your place in the jury box.

10 THE JUROR: Okay.

11 (Juror leaves.)

12 (Next juror.)

13 THE COURT: Mr. McAfee.

14 THE JUROR: Hello.

15 THE COURT: You're Charles E. McAfee?

16 THE JUROR: That's correct.

17 THE COURT: And, Mr. McAfee, you answered "no" to
18 these questions. Did you answer "yes" to any questions
19 that I put in open court?

20 THE JUROR: Um, yes, I did.

21 THE COURT: Tell us which ones.

22 THE JUROR: Let's see. Well, I'm retired after 40
23 years of being a principal in the city. Unfortunately I
24 try to be as honest and fair as I can possibly be.
25 That's what I've done with children. But to be honest,

1 I'm slightly -- actually very biased against drug
2 companies. Um, 60 Minutes, the generic things. The
3 fact is at my age I see more commercials on drugs than I
4 do with anything. So to be clear, um, I don't think I
5 could do this fairly. I'm biased.

6 THE COURT: You've done just right. I will do my
7 best to explain the law, but even though I explain to
8 you the law, you think you've got a bias?

9 THE JUROR: Yeah, I've been a leader for 40 years
10 and I'd hate to be in a position where my position would
11 be --

12 THE COURT: All right. I'm going to excuse you on
13 this case and you go back downstairs and --

14 THE JUROR: Sure. It's very nice meeting you.

15 THE COURT: It's nice to meet you, sir.

16 (Juror leaves.)

17 (Next juror.)

18 THE COURT: Ms. Hogan.

19 And you're Elena Hogan?

20 THE JUROR: Yes, I am.

21 THE COURT: And you've answered -- you don't know
22 if you own any stock in any of these companies?

23 THE JUROR: No, my husband does all our portfolio
24 managing. I have no idea.

25 THE COURT: Okay. We'll just go ahead with that.

1 THE JUROR: Fair enough.

2 THE COURT: Did you answer "yes" to any of the
3 questions that I put before you today?

4 THE JUROR: Yes.

5 THE COURT: Which one?

6 THE JUROR: The bias against a pharmaceutical
7 company.

8 THE COURT: Tell me what it is.

9 THE JUROR: I'm a stay-at-home mom with two
10 children, ages 14 and 16, and they were both medically
11 injured by vaccinations, and I've spent about 15 years
12 trying to heal the harm that's been done by those
13 vaccinations.

14 THE COURT: You've done just right to tell us.
15 You're excused from this case. And I thank you very
16 much.

17 THE JUROR: Okay. Thank you.

18 (Juror leaves.)

19 (Next juror.)

20 THE COURT: And, Ms. Purks. I probably
21 mispronounced your name.

22 THE JUROR: It's fine.

23 THE COURT: All right, it's fine. So you are
24 Barbara A. Purks?

25 THE JUROR: Yes.

1 THE COURT: Let's go right to the issue here.
2 I've had this same problem and it's a terrible pain. So
3 when did it happen?

4 THE JUROR: Actually it was a while ago, but I
5 just got the check from the insurance company. So just
6 --

7 THE COURT: Now I tried --

8 THE JUROR: I also had fire and water damage.

9 THE COURT: I'm very sorry.

10 THE JUROR: So I'm pretty wary.

11 THE COURT: Well, I tried to deal with that, as
12 well as work-related issues. That schedule we gave you,
13 that's for real. We're not going to keep you here
14 beyond 1:00 in the afternoon any day until December when
15 the trial is over. But it seems to me that you could
16 probably work this out since you know the schedule in
17 advance.

18 THE JUROR: Well, I don't mean to interrupt.

19 THE COURT: Go ahead.

20 THE JUROR: The issue I have is that, um, you
21 know, I have most of the contractors and stuff coming
22 early in the morning and every time it rains, you know,
23 I have like a couple of tree limbs through the roof and
24 I've got about 50 holes and it's really --

25 THE COURT: I'll excuse you from service in this

1 case.

2 THE JUROR: Really. I really appreciate it. And
3 just --

4 THE COURT: Well, that's fine. You're excused.

5 THE JUROR: It was a really close call and I --

6 THE COURT: That's right. She's excused.

7 (Juror leaves.)

8 (Next juror.)

9 THE COURT: Mr. Boisvert.

10 And you're David Boisvert?

11 THE JUROR: I am.

12 THE COURT: You answered "no" to these questions.

13 THE JUROR: I did.

14 THE COURT: And did you answer "yes" to any of the
15 questions I put here in open court?

16 THE JUROR: Yes.

17 THE COURT: And which ones?

18 THE JUROR: I think it was with regards to the
19 pricing of the medications and whatnot.

20 THE COURT: And how do you feel about that?

21 THE JUROR: Well, I know my daughter gets an
22 infusion once a month and it costs thousands of dollars
23 just for the medicine. No one can explain to me why it
24 cost that much for just the medicine, so I have a
25 slightly skewed outlook on the whole process.

1 THE COURT: You did just right to tell us. We'll
2 excuse you from service on this case and we'll find a
3 different case for you. Thank you.

4 THE JUROR: Thank you.

5 (Juror leaves.)

6 (Next juror.)

7 THE COURT: Ms. Proctor.

8 You're Amanda Proctor?

9 THE JUROR: Uh-huh.

10 THE COURT: Looking at these answers, you're not
11 sure if you own any stock in these corporations?

12 THE JUROR: Yeah, I have a big list and I didn't
13 want to say "No," but I have no idea.

14 THE COURT: Well, we're going to go on the idea
15 that you don't.

16 THE JUROR: Okay.

17 THE COURT: Did you answer "yes" to any of the
18 questions that I put here in court?

19 THE JUROR: Yes.

20 THE COURT: Which ones?

21 THE JUROR: Um, feeling strongly about
22 pharmaceutical companies.

23 THE COURT: Tell us how you feel.

24 THE JUROR: That they're ridiculously greedy.

25 I've already decided, you know, bad guy, good guy in

1 this case, so I feel I'm not a good person to --

2 THE COURT: You did just right to tell us. You're
3 excused from service on this case. Please go back
4 downstairs.

5 (Juror leaves.)

6 (Next juror.)

7 THE COURT: Ms. Hamilton.

8 Hi. You're Melissa Hamilton?

9 THE JUROR: Hamilton, yes.

10 THE COURT: You answered "no" to these questions,
11 but did you answer "yes" to any of the questions that I
12 put here in open court?

13 THE JUROR: No, I did not.

14 THE COURT: Do you truly think you can be fair,
15 fair to both the wholesalers, the retailers, the union
16 benefit plans, the people suing, but equally fair to the
17 three pharmaceutical companies being sued?

18 THE JUROR: Yes.

19 THE COURT: Okay. So we get to know you better,
20 would you tell us what you do and if you're married what
21 your husband does.

22 THE JUROR: I'm a data coach and I'm in a school
23 in Boston Public Schools and I'm a math specialist and I
24 work with small groups of students. And my husband of
25 two months is an accountant, a property accountant.

1 THE COURT: Thank you. I'll ask you to take a
2 seat in the box.

3 THE JUROR: Thank you.

4 (Juror leaves.)

5 (Next juror.)

6 THE COURT: And Ms. Slater.

7 Now, you're Suzannah Slater?

8 THE JUROR: Yes, that's right.

9 THE COURT: Let's jump right to this. I'm so
10 sorry for the loss of your mother and that's truly on
11 behalf of all of us. And you know that your job is
12 absolutely secure if you serve as a juror, that's the
13 federal law.

14 THE JUROR: Right.

15 THE COURT: You can't get laid off. Your job is
16 secure.

17 THE JUROR: Right, I know that.

18 THE COURT: I do need people from all walks of
19 life, so you have told me, but since your job is secure,
20 don't you think you can work that out?

21 THE JUROR: I can, but I'm not going to make it
22 alone. I'm behind on medical bills, so I'm not going to
23 get my full pay, or amount of pay, and so if it's
24 prolonged --

25 THE COURT: That's true, um, but that's an aspect

1 of any case like this. But on balance I'm going to
2 excuse you from service on this jury. You may go.

3 THE JUROR: Thank you.

4 (Juror leaves.)

5 (Next juror.)

6 THE COURT: Ms. Mancuso.

7 You're Sarah Mancuso?

8 THE JUROR: Yes.

9 THE COURT: And you've answered "no" to these
10 questions, but did you answer "yes" to any of the
11 questions that I put in open court?

12 THE JUROR: No.

13 THE COURT: Do you truly think you can be fair,
14 fair to the wholesalers, the retailers, the unit benefit
15 plans, the people suing, but equally fair to the three
16 pharmaceutical companies that are being sued?

17 THE JUROR: I think so.

18 THE COURT: All right. So we can get to know you
19 a little better, can you tell us what you do?

20 THE JUROR: Sure. I work at Mass. General, I'm a
21 Mass. psychomatrixian, which is like a tech in
22 neuropsychology.

23 THE COURT: Thank you. And I don't mean to be
24 personal, but if you're married, can you tell us what
25 your husband does?

1 THE JUROR: I'm not married.

2 THE COURT: All right. Thank you. Would you take
3 a seat in the jury box.

4 (Juror leaves.)

5 (Next juror.)

6 THE COURT: Ms. Hsieh.

7 I'm not sure I'm pronouncing this right. Hsiao
8 Hsieh?

9 THE JUROR: Yes.

10 THE COURT: All right. You've answered "no" to
11 these questions. Did you answer "yes" to any of the
12 questions that I put here in the courtroom?

13 THE JUROR: No.

14 THE COURT: Do you truly think you could be fair,
15 fair to the wholesalers, the retailers, the union
16 benefit plans, the people suing, and equally fair to the
17 three pharmaceutical companies that are being sued?

18 THE JUROR: I understand about them equally,
19 however English is not my first language. I am afraid
20 that my English won't be -- I'm just afraid I'm not
21 competent enough for the complexity of this case,
22 whatever it is.

23 THE COURT: You did just right to tell us. You're
24 speaking superbly.

25 THE JUROR: Don't get fooled by that.

1 (Laughter.)

2 THE COURT: Part of the glory of the jury system
3 is everyone gets a chance to serve and I was taking --
4 we let the jurors ask questions. If you don't
5 understand anything, you can just raise your hand and
6 I'll see that it's explained to you.

7 So we'll ask you to take a seat in the jury box.
8 Thank you.

9 (Juror leaves.)

10 (Next juror.)

11 THE COURT: Ms. Gammons.

12 You're Meredith A. Gammons?

13 THE JUROR: I am.

14 THE COURT: And you answered "no" to these
15 questions, but did you answer "yes" to any of the
16 questions I put here in open court?

17 THE JUROR: I think one.

18 THE COURT: And what was that?

19 THE JUROR: Um, I don't remember what that was.

20 THE COURT: Well, let me just ask you the most
21 general question. Can you think of anything I need to
22 know going in here about you?

23 THE JUROR: Um, only that I have a medical
24 background. I'm a nurse.

25 THE COURT: Uh-huh. Well, let me put the bottom

1 line question.

2 Do you really think, knowing what you know about
3 in this case, that you can be fair, fair to the people
4 suing, the wholesalers, the retailers, the union benefit
5 plans, the people, and equally fair to the three
6 pharmaceutical companies that are being sued?

7 THE JUROR: I hope so.

8 THE COURT: So you believe you can? Do you?

9 THE JUROR: Yes.

10 THE COURT: All right. And you've told us you
11 were a nurse. Would you tell us -- if you're married,
12 would you tell us what your husband does?

13 THE JUROR: My husband is in the insurance
14 business, he's in executive insurance, um, and I worked
15 for Harvard Pilgrim Health Care and I've worked there --
16 I don't know how far back you want me to go?

17 THE COURT: No, not all the places. But are you
18 currently in nursing?

19 THE JUROR: Well, off and on. I mean I'm more
20 retired than not, but I'm still in it.

21 THE COURT: All right. And nurses today have
22 different specialties. What was your background in
23 nursing?

24 THE JUROR: Um, at the end it was pediatric case
25 management and adult OB high-risk obstetrics.

1 THE COURT: All right. I ask you to take a seat
2 in the jury box.

3 THE JUROR: Can I ask you a question?

4 THE COURT: Always.

5 THE JUROR: Do you have a sound system in here?

6 THE COURT: Um, we have microphones and we have no
7 problem, if you have a hearing issue, we will address
8 it.

9 THE JUROR: Okay.

10 THE COURT: I'll ask you to take a seat in the
11 jury box.

12 THE CLERK: Okay, Judge.

13 THE COURT: All right.

14 (Juror leaves.)

15 THE COURT: The defense?

16 (Pause.)

17 MR. BUTSWINKAS: Judge, Juror Number 44.

18 THE COURT: In what seat? Who is it? I prefer
19 you not to point at him.

20 MR. SOBOL: Oh. 12, your Honor.

21 THE COURT: Seat Number 12, the juror.

22 MR. BUTSWINKAS: Yes, of course.

23 THE COURT: She's excused.

24 You have one challenge left. Are you otherwise
25 content?

1 MR. VAN WART: Yes.

2 THE COURT: All right.

3 The plaintiffs?

4 MR. HILLIARD: 31, your Honor. Otherwise content.

5 THE COURT: In what seat?

6 MR. SOBOL: 3, your Honor.

7 MR. HILLIARD: In the back row.

8 THE COURT: Seat 3. She's excused. Those two
9 jurors are excused.

10

11 (In open court.)

12 THE CLERK: Juror 31, Ms. Sahoo, and Juror Number
13 44, Ms. Gammons, you may leave the jury box.

14 (Jurors leave the box.)

15

16 AT THE SIDEBAR

17 THE COURT: Wait a minute. You've excused an
18 Indian American. Why are you excusing her?

19 MR. HILLIARD: It was for a race-neutral reason,
20 your Honor.

21 THE COURT: Yeah, but what is it? I want to know.

22 MR. HILLIARD: Just give me -- just a second,
23 Judge. I understand the question.

24 MR. MARTINEZ: It was the info tech person that
25 worked for Aetna.

1 THE COURT: Very well. That challenge is
2 accepted. She's excused.

3 (Pause.)

4 THE COURT: Mr. Fubel.
5 You're Richard Fubel?

6 THE JUROR: Fubel. Yes.

7 THE COURT: The first question is you don't know,
8 in the period, whether you've taken Nexium?

9 THE JUROR: I don't take any prescriptions, but
10 you said my immediate family and my brother and father,
11 who I just lost to cancer, they've taken all kinds of
12 stuff.

13 THE COURT: I see. But you don't know if anyone
14 had taken --

15 THE JUROR: No, I really don't know what they've
16 taken. I don't know anything about that.

17 THE COURT: All right. And your other answers
18 were "no." Did you answer "yes" to any of the questions
19 I put here in open court?

20 THE JUROR: Um, no. I have a friend who works in
21 clinical trials for drug testing, but other than that,
22 no.

23 THE COURT: Does that cause you to lean one way or
24 the other?

25 THE JUROR: No, not for that.

1 THE COURT: All right. Do you truly think you can
2 be fair, fair to the people suing, the wholesalers, the
3 union benefit plans, the people, but be equally fair to
4 the pharmaceutical companies that are being sued?

5 THE JUROR: I could. I just -- I just have a lot
6 of court fatigue. I just finished a long legal process.
7 I lost my husband to drug addiction. And even though we
8 were married, I had no rights at all to help him. And
9 my last time in the courts is I spent a year going to
10 court and having him be removed from our home. And I
11 thought I could do this, but I don't know if I could
12 come into the court.

13 THE COURT: I'm going to ask you to stay. I'm
14 very sensitive to what you just said. I think you will
15 find this experience both to be quiet, challenging, and
16 respectful to everyone involved. I'll ask you to take a
17 seat in the jury box.

18 (Juror leaves.)

19 (Next juror.)

20 THE COURT: Mr. MacDonald.
21 You're Daniel J. MacDonald?

22 THE JUROR: I am.

23 THE COURT: You answered "no" to these questions.
24 Did you answer "yes" to any of the questions in open
25 court?

1 THE JUROR: I did.

2 THE COURT: And what was that?

3 THE JUROR: We briefly discussed pricing and stuff
4 like that and having my mother for eight years with
5 kidney failure, and suffering through that, and then the
6 angst that she would have if the doctor was to change
7 medicines on her and the bills would come home and the
8 --

9 THE COURT: We'll excuse you from serving on this
10 case and I thank you.

11 THE JUROR: Thank you, sir.

12 THE COURT: Um, wait one second, Mr. Fubel.

13 I neglected to ask you one question I've been
14 asking and it is this. Do you mind telling us what you
15 do for work, sir, just to get to know you a little
16 better.

17 THE JUROR: Um, over here?

18 THE COURT: Over there is fine.

19 THE JUROR: I'm a technical writer for policies
20 and procedures.

21 THE COURT: Thank you.

22 (Juror leaves.)

23 (Next juror.)

24 THE COURT: Mr. Sharkey.

25 You're William Sharkey?

1 THE JUROR: Yes.

2 THE COURT: You answered "no" to these questions.
3 Did you answer "yes" to any questions that I put in open
4 court?

5 THE JUROR: No.

6 THE COURT: Do you truly think you can be fair,
7 fair to the wholesalers, the retailers, the union
8 benefit plans, the people suing, and equally fair to the
9 three pharmaceutical companies being sued?

10 THE JUROR: Yes.

11 THE COURT: Just so we can get to know you better,
12 what do you do and if you're married, what does your
13 spouse do?

14 THE JUROR: No, I'm single, and I'm a construction
15 project manager.

16 THE COURT: Thank you. We'll ask you to take a
17 seat in the jury box.

18 (Juror leaves.)

19 THE COURT: Oh, Mr. Hilliard?

20 MR. HILLIARD: 10 seconds, your Honor?

21 (Pause.)

22 MR. HILLIARD: We're content.

23 THE COURT: The defense?

24 (Pause.)

25 THE COURT: Very well. That's a jury.

1 MR. BUTSWINKAS: No, your Honor, 45, please.

2 THE COURT: Which one is that?

3 MR. BALDRIDGE: Mr. Fubel.

4 THE COURT: Okay, he's excused. And you're out of
5 challenges.

6

7 (In open court.)

8 THE CLERK: Juror Number 45, Mr. Fubel, is
9 excused.

10 (Leaves box.)

11

12 AT THE SIDEBAR

13 THE COURT: Mr. Cloutman.

14 And you're Robert Cloutman?

15 THE JUROR: Yes.

16 THE COURT: And looking at these answers, you
17 don't take Nexium, do you?

18 THE JUROR: No.

19 THE COURT: And the question is broader than that.
20 You just don't know whether anyone in your family does?

21 THE JUROR: That's right, I do not know.

22 THE COURT: All right. Do you know what Nexium's
23 for? Well, it's sort of like an acid reflux pill. Ring
24 any bells?

25 THE JUROR: My brother had acid reflux issues, but

1 I'm not sure if he took it or not.

2 THE COURT: But you don't know that he did?

3 THE JUROR: Um, no.

4 THE COURT: All right. Let me ask you this. Did
5 you answer "yes" to any of the questions that I put here
6 in open court?

7 THE JUROR: No.

8 THE COURT: Do you truly think you can be fair,
9 fair to each of the entities suing, the wholesalers, the
10 retailers, the union benefit plans, the people suing,
11 equally fair to the three pharmaceutical companies being
12 sued?

13 THE JUROR: I think I can.

14 THE COURT: All right. So we get to know you a
15 little better, can you tell us what you do and if you're
16 married what your spouse does?

17 THE JUROR: Well, I'm single and I'm a design
18 drafter and a checker.

19 THE COURT: A checker?

20 THE JUROR: I do a lot of checking of prints.

21 THE COURT: Of others?

22 THE JUROR: Yes.

23 THE COURT: Okay. Thank you. We'll ask you to
24 take your place on the jury. Thank you.

25 (Juror leaves.)

1 THE COURT: The plaintiff?

2 MR. HILLIARD: We're going to exercise a strike on
3 Number 48, Mr. Cloutman.

4 THE COURT: He's excused. Mr. Cloutman.

5

6 (In open court.)

7 THE CLERK: Juror Number 48, Mr. Cloutman, you've
8 been excused from the jury.

9 (Juror leaves.)

10

11 AT THE SIDEBAR

12 THE COURT: And you're Ann Quinn-Kenny?

13 THE JUROR: Correct, Judge.

14 THE COURT: Let's jump right to your concern here.

15 THE JUROR: Okay.

16 THE COURT: Tell us where you're employed?

17 THE JUROR: I work for a home health agency and
18 I'm a nurse.

19 THE COURT: Okay. Now you know under the law your
20 job is absolutely secure, that no one can touch your job
21 while you're serving as a juror. You know about that?

22 THE JUROR: Okay.

23 THE COURT: And I try to handle the
24 employment-related things. That schedule we gave you
25 downstairs, I'm sticking to that, I'll have you out of

1 here every day at 1:00.

2 Now, I need people from all walks of life. So can
3 you possibly swing that?

4 THE JUROR: My shift is the morning shift. I have
5 a spinal cord injury case and she's a total care and
6 they'll find it very difficult to find someone to take
7 my place because I'm a nurse and it's very difficult to
8 get a nurse who will --

9 THE COURT: Okay, I'll excuse you from service.
10 Thank you very much.

11 (Juror leaves.)

12 (Next juror.)

13 THE COURT: Ms. Malatzky.

14 And you're Robyn Malatzky?

15 THE JUROR: Yes.

16 THE COURT: And I see that years ago your husband
17 worked for CVS, but I should ask you, from that
18 experience you wouldn't favor CVS in here in any way?

19 THE JUROR: Do I favor it?

20 THE COURT: Just because he worked there.

21 THE JUROR: Um, I mean I go to it all the time,
22 that's the one I go to, but, you know --

23 THE COURT: Are you going to be hostile or
24 skeptical of them because your husband worked there?

25 THE JUROR: No.

1 THE COURT: All right. Did you answer "yes" to
2 any of the questions I put here in open court?

3 THE JUROR: Um, yes.

4 THE COURT: Which ones?

5 THE JUROR: Only one, I think, about that the
6 prices of drugs are very expensive. I think generics
7 are much better. I believe in that, so.

8 THE COURT: All right. Now this case is going to
9 involve the price of prescription drugs and the price of
10 generics. We're going to hear a lot about that.

11 THE JUROR: Right.

12 THE COURT: I'm going to explain what you can
13 consider properly and what you can't consider.

14 Now, do you think you can follow what my
15 explanation of the law is even though you think the
16 prices generally are too high?

17 THE JUROR: No, I can follow it.

18 THE COURT: All right. We'll ask you to take a
19 seat in the jury box.

20 (Juror leaves.)

21 THE COURT: Mr. Hilliard?

22 MR. HILLIARD: We're content.

23 THE COURT: I'm not surprised.

24 (Laughter.)

25

1 (In open court.)

2 THE COURT: Now, for those of you we didn't reach,
3 I thank you so much for your participation in this
4 process, and Ms. Gaudet will give one of you your cards
5 and you're all excused to go downstairs.

6 Now, we have the jury in this case. And I don't
7 want to keep you here, but I do want to give you some
8 very important instructions. And we will start tomorrow
9 at 9:00 a.m. The normal court day is 9:00 till 1:00 and
10 I will stick to that each day.

11 Now, here are my instructions, instructions which
12 you must follow. I don't mean to be too pompous, but
13 they are important and you have to follow them.

14 First, keep your mind suspended. This trial is
15 going to take a while. It's not going to take any
16 longer than we said on that schedule. We're going to
17 stick to that schedule. But it will take a while. And
18 so you've got to keep from making your mind up until
19 you've heard all the witnesses.

20 The last witness is as important as the first.
21 The first witness is as important as the last. We're
22 going to let you take notes as the trial goes on, but
23 you should keep your minds suspended. Don't be making
24 your minds up while the trial is going on. Keep your
25 minds suspended.

1 Second, you are not to talk to anyone about the
2 substance of this case. Now, what do I mean by that?
3 As soon as I'm done talking here, you're going to be
4 free to go. We actually have refreshments for you back
5 there and we're going to take you back to the jury room.
6 Feel free to take those refreshments with you. Sit
7 there and enjoy them. But you're free to go, when this
8 court session is over, until 9:00 tomorrow morning.

9 When I say you're not to talk to anyone, naturally
10 having been chosen as the jury, the judges of the facts
11 in this case, the only judges of the facts that this
12 case is ever going to have are you 12 men and women. So
13 naturally while you're free to go, you can go about your
14 business, you can go home, you can go back to work, and
15 to anyone you're going to say, "Well, I went, yeah, they
16 kept me, and he says it's going to go six weeks, and
17 we've got a schedule."

18 Now, you have -- and we understand what this does
19 to your personal and professional life, we understand
20 that, and so you can explain the schedule, you can
21 explain what I've explained to you now. But what's
22 going to happen is, whoever you go home to or whoever
23 you go back to work to, they're all going to say, "Well,
24 what kind of case is it? What were you picked on?"
25 Because while jury service applies to us all, it's

1 relatively infrequent and people are going to want to
2 know what you're doing.

3 You have to tell them, "The judge told us we
4 couldn't say anything about the substance of the case."
5 Not that it's a civil case. It is a civil case. Not
6 anything about who the parties to our case are, because
7 just as sure as tonight follows today, if you do that
8 they're immediately going to tell you what they think
9 about it, and we're not interested what they think about
10 it. They didn't go through this process. They weren't
11 chosen to be the judges of the facts in this case. They
12 are not the sworn judges of the facts. They won't hear
13 any evidence. They won't hear cross-examination, the
14 challenge to the evidence that you are going to hear.
15 So that's why you can't talk about it.

16 Now, when it's over, you can say anything to
17 anyone about anything. But while it's going on, you're
18 not to talk to anyone about anything that goes on here
19 in this room. Not that it's secret, it's not secret,
20 every single word is taken down by our Court Reporter.
21 It's all a matter of record. The courtroom must be open
22 so people can come in and see that justice is done. But
23 you occupy a special position, you are a constitutional
24 actor in this process. So you don't talk to anyone.

25 Now, by "talk," in today's modern world, don't you

1 go twitting or tweeting or e-mailing or the like about
2 "Guess what, I'm on a jury." Nothing about that.
3 That's "talking" about the case. Equally don't you
4 launch off on the internet and start looking us all up,
5 not the companies, not the names of the lawyers as you
6 learn their names, not my name. Don't you go do any
7 research about this case. And here's why. Everything
8 that's legally significant in this case is going to be
9 laid out to you by the lawyers. They're very good
10 lawyers. They know what they're doing. They will
11 explain, through witnesses, through exhibits, what the
12 issues are, and there are very real issues, there are
13 disputes here that you have to resolve. But the only
14 fair way, the only fair way is if we do it all together
15 in this room while everyone can hear what the other one
16 is saying and can ask questions about it. Don't you go
17 launch off and do your own investigation.

18 And lastly this. We'll start right promptly at
19 9:00 a.m. tomorrow, so I need you all back there in that
20 jury room tomorrow, ready to go, to launch off at
21 9:00 a.m., and some of you may get here early and some
22 of you may stay and have lunch on us today, that's all
23 up to you. But don't you talk about the case among
24 yourselves while it's going on. And you may ask "That's
25 a little counterintuitive," you say, "Why not, we're the

1 judges, of course we can talk about it." No, I will
2 tell you tomorrow, actually I'll say it now and I'll
3 repeat it, the verdict in this case has to be unanimous,
4 all 12 of you agreeing about the specific issues we're
5 going to ask you. You have to agree whether the answer
6 to certain questions is "yes" or "no," you all have to
7 agree. So jury deliberations are the deliberations of
8 all 12 of you, not the five that stay and have the lunch
9 today while the rest are gone and not the first three in
10 tomorrow morning. It's all 12 of you. And if you start
11 talking about it, then you're sort of running up to the
12 first thing I've said, your mind isn't suspended,
13 because you can't talk about these things without taking
14 a slant on it.

15 So I'm not saying don't talk. Once -- at exactly
16 this point in the case, tomorrow morning Ms. Gaudet came
17 into the jury room, there are the 12 jurors, all ready
18 to go, all utterly silent. That's not what we're
19 talking about. This is a communitarian effort. You are
20 the jury in this case. There are no alternates on this
21 jury. All of you together will decide how this case
22 comes out. So get to know each other. You're going to
23 be working together on this case. Just don't talk about
24 what goes on in this room. And I mean anything in this
25 room. Not how many lawyers there are for this one or

1 that one or how they're dressed or why I wear a robe, or
2 anything that goes on in this room. You can talk about
3 anything else, but not that.

4 I didn't say about the press because I don't know
5 if there's going to be any mention made in the press,
6 but you've got to use your good common sense. If people
7 start talking about a Nexium case or are talking about
8 any of these entities that I've mentioned, that's our
9 case, um, here in Boston, so you've got to turn that
10 page of the paper, change the channel, you get all your
11 information about this case, while you're here, in open
12 court.

13 Now, the tradition in this court is that once we
14 have a jury, we'll all stand up for you as you go in and
15 out, and I'm not going to go over all these instructions
16 every day and beat a dead horse, because I know you'll
17 follow them. But to remind us, because this is so
18 important, every time we recess I will say, "Keep your
19 minds suspended, do not discuss the case either among
20 yourselves nor with anyone else."

21 Now, I'd like you to go with Ms. Gaudet because
22 she needs to show you the jury room. There really are
23 refreshments back there. We will start tomorrow at
24 9:00. You may stand in recess till 9:00 tomorrow
25 morning. I'll remain on the bench.

1 (Jury leaves, 1:25 p.m.)

2 THE COURT: Please be seated.

3 Out of the 15 days allotted to each side, the
4 plaintiffs have used up 1 hour and 45 minutes, the
5 defense has used up 1 hour and 45 minutes. We'll stand
6 in recess until 9:00 a.m. tomorrow morning. We're in
7 recess.

8 (Adjourned, 1:30 p.m.)

9
10 C E R T I F I C A T E

11
12 I, RICHARD H. ROMANOW, OFFICIAL COURT REPORTER,
13 do hereby certify that the foregoing record is a true
14 and accurate transcription of my stenographic notes
15 before Judge William G. Young, on Monday, October 20,
16 2014, to the best of my skill and ability.

17
18
19
20
21 /s/ Richard H. Romanow 10-28-14

22 _____
RICHARD H. ROMANOW Date
23
24
25